

In the Matter of)
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Assessment and Collection) MD Docket No. 03-83
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of Regulatory Fees for)
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Fiscal Year 2003)
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The American Mobile Telecommunications Association, Inc. (“AMTA” or “Association”), by its attorneys and in accordance with Federal Communications Commission (“FCC” or “Commission”) Rule Section 1.415, respectfully submits its comments in the above-entitled proceeding.¹ The Association is deeply troubled by the proposed sharp percentage increase in the CMRS Messaging Service per unit regulatory fee. AMTA expressed serious concern about this trend in its comments on last year’s proposed regulatory fees. Because those concerns have been confirmed in the instant NPR, the Association urges the Commission to clarify and revisit the methodology by which it apportions regulatory fees among service categories.

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz Specialized Mobile Radio ("SMR") service operators holding

¹*Assessment and Collection of Regulatory Fees for Fiscal Year 2003*, MD Docket No. 03-83, FCC 03-64 (rel. Mar. 24, 2003) (“Notice” or “NPR”).

site-specific and/or geographic authorizations, as well as commercial licensees in the 217-220 MHz, 220-222 MHz and 150-512 MHz bands. With the exception of a very small number of entities with spectrum holdings that place them in the CMRS Mobile Services category, the rest of AMTA's members holding CMRS authorizations are classified as CMRS Messaging Service for purposes of their regulatory fees. Therefore, the Association and its members have a significant interest in the outcome of this proceeding.

II BACKGROUND

AMTA has participated consistently in the Commission's regulatory fee deliberations. Initially, the Association focused on distinguishing the businesses operated by the vast majority of its members from those of so-called "broadband" CMRS licensees. It explained that the limited spectrum holdings and geographic coverage of these systems dictated that they would serve specialized, localized communications requirements entirely unlike the offerings of cellular and PCS-type systems. The Association explained that their members' typically site-specific, frequency-limited systems did not and could not enjoy the capacity of a broadband CMRS operation and, thus, were severely circumscribed in the number of customers that could be served and the types of offerings that could be made available to them.

The Commission ultimately agreed with AMTA's arguments and reclassified two-way CMRS operators with spectrum holdings below a prescribed level as CMRS Messaging Service for regulatory fee purposes. That reclassification resulted in a significant reduction in the per unit fee, a fee that was more consistent with the benefit the users/operators derive from the service and with the relative amount of regulatory resources devoted to this industry segment by the FCC.

The applicable fee first was set at what AMTA considered a reasonable \$.04 per unit. That number subsequently was increased to \$.05 per unit in 2001, presumably based exclusively on a

projected decreasing number of units within the category rather than any determination that the services included had received a greater percentage of the FCC's resources.

Then, in 2002, the CMRS Messaging Service fee was proposed to jump from \$.05 to \$.08 per unit. The increase was not large in an absolute dollar sense, but it represented a sixty percent (60%) increase over the previous year's assessment. This sharp increase prompted AMTA to submit comments urging the Commission to reassess the actual costs associated with regulating licensees in the category, noting that as the number of licensees decreases there should be a some corollary decrease in the cost of regulating the service. The Commission nonetheless approved the proposed \$.08 per unit fee without addressing the substantive issues raised by the Association.

This year the FCC has proposed to increase the CMRS Messaging Service per unit fee from \$.08 to \$.11. This constitutes a thirty-seven and one half percent (37.5) increase over the 2002 fee and a more than one hundred percent (100%) increase over the 2001 fee of \$.05 per unit. If the FCC is going to adopt a percentage increase of this magnitude, it is incumbent upon the agency to explain the basis on which the assessment has been made. This explanation must include not only the information used to predict the number of units likely to be included in the category, but a full disclosure of the other half of the equation – the methodology by which the FCC determines the percentage of the regulatory fee burden to be assumed by each payor category.

III THE FCC'S REGULATORY FEE ANALYSIS MUST BE PREMISED ON A COST-ACCOUNTING METHODOLOGY FOR APPORTIONING REGULATORY REVENUE REQUIREMENTS AMONG INDUSTRY SEGMENTS

AMTA does not doubt that the number of units served by entities that fall within the CMRS Messaging Services category has declined in recent years. There unquestionably is both anecdotal and statistical evidence to support that conclusion. As the broadband CMRS industry and other

competitive providers have expanded their geographic coverage and service offerings, the number of customers in the Messaging Service category has diminished.

However, AMTA is deeply troubled by the FCC's apparent disregard for its obligation to consider not only the number of units served but the burden their regulation places on the Commission in calculating the appropriate annual regulatory fee. Section 9(a)(1) of the Communications Act specifically identifies the activities the FCC is to take into account in its regulatory fee assessment: enforcement activities, policy and rule making activities, user information services and international activities.²

²47 U.S.C. §159(a)(1).

As far as the Association has been able to determine based on the scanty information provided in the Commission's records on this matter, the agency has not recalculated the relative apportionment among service regulated within the Wireless Telecommunications Bureau since at least 1999.³ Yet, it cannot escape the notice of even the most casual observer that the FCC's wireless activities during this period largely have been devoted to matters relating to broadband CMRS, the reallocation of large spectrum blocks, none of which are expected to be designated for use by the services within the CMRS Messaging Services category, and public safety systems.⁴ At the same time, the FCC's licensing responsibilities for Messaging Services have become *de minimis* as the Commission largely has replaced site-specific with more regulatorily-efficient geographic authorizations, retaining the site-specific model only in services and bands in which applications require prior coordination by independent frequency coordinators for whose services the applicant pays directly. The scope of the FCC's rule making, enforcement, policy, user information and international services associated with these types of licenses surely has decreased significantly. It strains credulity to believe that the proportionate share of these activities has not shifted notably over the past few years, yet that shift does not appear to be reflected in the annual regulatory fee apportionment.

IV CONCLUSION

³The same may be true for other operating Bureaus, but AMTA has no particular experience with their activities.

⁴The regulation of public safety service activities unquestionably has demanded very significant Wireless Telecommunications Bureau resources in recent years. Of course, public safety licensees are exempt from regulatory and other FCC-imposed fees. The Association does not question the resources expended on these activities. Indeed, the results benefit its members, all other Commission constituents and the public generally. However, as it has noted in previous comments, AMTA does not believe it is equitable for only other Wireless Telecommunications Bureau licensees to absorb the cost of providing regulatory services for the public safety community. Those costs should be shared equitably among all regulatory fee payors.

A greater than one hundred percent (100%) increase in regulatory fee obligations within a two year period surely deserves a thorough explanation and, AMTA suspects, recalculation. The Association urges the FCC to provide a detailed explanation of the cost-accounting methodology on which this apportionment has been made so the industry and the Commission may assess its accuracy and reasonableness.

Respectfully submitted,

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